

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Bail Application No. 888 of 2017

Applicant : Muhammad Ahsan, son of Muhammad Aslam through Mr. Riaz Ahmed Bhatti, Advocate
The State : Ms. Seema Zaidi, D.P.G. with SI Fahmeed Shah, P.S. Shah Faisal Colony.
Complainant : Muhammad Qamar-ul-Huda, present in person.
Date of hearing : 01.08.2017

ORDER

ADNAN-UL-KARIM MEMON, J. – The Applicant namely Muhammad Ahsan, son of Muhammad Aslam is seeking Post-arrest Bail in F.I.R. No.29/2017 registered for offences under section 392 and 34 P.P.C., Police Station Shah Faisal Colony, Karachi.

2. Brief facts of the case are that on 02.02.2017 Complainant lodged F.I.R against four unknown persons with allegation that on 02.02.2017 he after purchasing 50 prize bonds of Rs. 40,000/- denomination each from State Bank of Pakistan was going home on motorcycle along with his son namely Muhammad Basit Qamar; that at around 2:00 p.m. when he reached Azeem Poora, near Sitara Palace Marriage Hall, Block 2, Shah Faisal Colony, Karachi all of sudden 2 persons stopped him on gun point and their 2 other companions armed with weapons also came there and snatched envelope containing prize bonds from him, and from his son one mobile phone (NOTE/4) Sim No. 0332-2240575 and other material; that while snatching away said things they also fired on the ground and fled away on their motorcycles. Thereafter, Complainant lodged above specified F.I.R against unknown persons under section 392/34 P.P.C. Investigating Officer visited place of incident, recorded statement of

witnesses, obtained Call Data Record of mobile, got conducted F.S.L of one recovered bullet shell and on 15.02.2017 obtained FSL Report. Initially, Investigating Officer did not get any clue of accused persons therefore, on 27.2.2017 case was disposed of as 'A' class while investigation continued. On 15.03.2017, Investigating Officer on the basis of CCTV footage arrested accused namely Aftab Waheed and recovered from his possession 50 Prize Bonds of Rs. 750 denomination each, 24 Prize Bonds of Rs. 200 denomination each and 30 Prize Bonds of Rs. 100 denomination each and got his Identification Parade conducted on 21.3.2017 through Judicial Magistrate; that accused Aftab Waheed also disclosed names of 5 co-accused involved in the crime; On 17.03.2017 Investigation Officer arrested applicant Muhammad Ahsan/co-accused and recovered from his possession 5 Prize Bonds of Rs. 200/- denomination each. After said progress, Investigating Officer submitted Charge Sheet on 03.04.2017 by adding section 395, 397 and 109 P.P.C against all accused persons before learned Judicial Magistrate, Karachi, East.

3. Applicant approached the court of learned Sessions Judge, Karachi, East for Post-arrest Bail which was transferred to the court of VIth Additional Sessions Judge, Karachi, East and Bail was declined vide impugned Order dated 19.04.2017. Thereafter, Applicant approached this court for grant of post-arrest bail on 07.06.2017.

4. Mr. Riaz Ahmed Bhatti, learned counsel for the Applicant has contended that Applicant is innocent and has been falsely implicated by the Investigating Officer with malafide intention; that Applicant has nothing to do with the alleged crime; that name of the Applicant does not transpire in the F.I.R nor in the Complainant's statement recorded under section 161 Cr.P.C.; that police arrested Applicant on the statement of co-accused with allegation of recovery of 5 Prize Bonds of Rs. 200/- denomination each from his possession; that per F.I.R the

Complainant had purchased 50 prize bonds of Rs. 40,000/- denomination each and the alleged recovery of 5 Prize Bonds of Rs. 200/- denomination each after delay of about 1 ½ months even such recovery does not tally with the allegations. Therefore, alleged recovery on the face of it is foisted upon the Applicant; that other than this no evidence is placed on record by the prosecution to connect the Applicant with the alleged crime; that there is no proof of alluded abatement of offence or hatching conspiracy to commit crime as the basic ingredients of said offences are missing; that Investigating Officer has wrongly applied section 109 P.P.C. against the Applicant with malafide intention; that no incriminating material has been recovered from the possession of Applicant; that name of Applicant is given by co-accused in his confessional statement before police which is not admissible in evidence under Article 38 & 39 of the Qanun-e-Shahadat Order, 1984; that case of Applicant is different from other accused persons; that Applicant is not charged with dacoity/snatching of envelope containing 50 prize bonds of Rs. 40,000/- denomination each; that there is no direct role of the applicant but he was only shown to be present in the State Bank as per close circuit television but the instigating officer failed to prepare memo of seizure of CCTV footage, therefore, false implication of the applicant cannot be ruled out; that complainant has not leveled any allegation against the Applicant in the present crime; that the case of Applicant requires further inquiry therefore, Applicant is entitled to concession of Post arrest Bail. In support of his case learned counsel for the Applicant placed reliance upon the case of Muhammad Rehan Vs. The State (2014 MLD 1317), Said Nawab & others Vs. The State (2013, YLR, 990), and Zohaib Yasmin Sheikh Vs. The State (2011 YLR 2324).

5. Ms. Seema Zaidi, learned D.P.G. opposed grant of Post-arrest Bail to Applicant on the ground that there is recovery of 5 Prize Bonds of Rs. 200/- denomination each from the possession of Applicant; that co-accused namely Aftab Waheed has nominated Applicant and other companions involved in the instant crime; that co-accused (Abdul Waheed) is identified by the Complainant during Identification Parade; that Applicant is involved in heinous crime; that it has transpired in the Call Data Record of accused person that Applicant was involved in such crimes with his companions; that prosecution has collected sufficient incriminating material to connect the Applicant with the instant crime therefore, no relief of post arrest bail can be given to the Applicant.

6. I have heard learned counsel for the parties and perused the material available on record as well as case law cited at the bar.

7. That tentative assessment of record reflects the following aspects of the case:

- a. Name of Applicant is not mentioned in the F.I.R.
- b. Applicant is charge sheeted on the ground that he is involved in hatching plan with main accused person to commit instant crime under section 109 P.P.C. and Investigation Report is silent on this aspect of the case.
- c. Complainant has alleged that he was robbed of 50 prize bonds of Rs. 40,000/- denomination each whereas, Investigation Officer has recovered 5 Prize Bonds of Rs. 200/- denomination each from the possession of Applicant which is apparently different from the robbed property.
- d. Prima-facie, recovery of 5 Prize Bonds of Rs. 200/- denomination each from possession of Applicant does not lead to the conclusion of hatching of conspiracy by the Applicant in connivance with the main accused or abatement.
- e. Prosecution has not alleged that Applicant has robbed the Complainant; therefore applicability of Section 395 and 397 of

P.P.C. have yet to be determined by the learned trial court after recording of evidence. Therefore case of Applicant requires further enquiry.

- f. CCTV footage evidence does not lead to the conclusion of guilt, which aspect of the matter will be determined by the learned trial court, after recording of evidence. Reliance is safely placed in the case of Akhtar Ali Ghowada Vs. The State (2015 MLD 1661)
- g. Applicant is implicated on the basis of statement of co-accused.

8. That in my considered view it is not proper to depend on ipsi dixit of police regarding guilt or innocence of an accused which can be best determined on the basis of evidence during trial. In this case, Applicant is arrested on the basis of statement made by co-accused before police which is not admissible in evidence under Article 38 & 39 of Qanun-e-Shahadat Order, 1984 hence; benefit of doubt goes to the Applicant at the bail stage. I am fortified by the decision given by the Honourable Supreme Court of Pakistan in the case of Raja Muhammad Younus Vs. The State (2013 SCMR 669).

9. Prima facie prosecution has not collected sufficient incriminating material which could attract section 109 P. P. C. Secondly, prosecution is yet to establish its case regarding application of section 395, 397 and 109 P.P.C during trial. On the above proposition of law the Honourable Supreme Court of Pakistan has already rendered the decision in the case of Moulana Abdul Aziz Vs. The State (2009 SCMR 1210).

10. It is well settled that where evidence with regard to the allegation of abatement or instigation is lacking the concession of bail can be extended to Applicant. Besides, Applicant has pointed out malafide on the part of Police therefore; he is entitled to concession of post arrest bail.

11. In view of the above facts and circumstances, I am of the opinion that Applicant/Accused has made out a case for grant of bail. Therefore, Applicant is granted Post arrest Bail subject to furnishing solvent surety in the sum of 200,000/- (Rupees two lac) and P.R. bond in the like amount to the satisfaction of learned Trial Court.

12. The above findings are tentative in nature which shall not prejudice the case of either party during the trial.

13. Foregoing are the reasons of short order dated 01.08.2017.

JUDGE

Shafi P.A